

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In Re: RFC and RESCAP Liquidating
Trust Action

Case No. 0:13-cv-3451 (SRN/HB)

This document relates to:

**ORDER GRANTING SUMMARY
JUDGMENT BY CONSENT**

ResCap Liquidating Trust v. Primary
Residential Mortgage, Inc., Case No. 16-
cv-4070 (SRN/HB)

SUSAN RICHARD NELSON, United States District Judge

Before the Court is Plaintiff ResCap Liquidating Trust's ("ResCap") February 5, 2020 letter, in which ResCap consents to the entry of summary judgment on Count One (Breach of Contract) of its Complaint. (*See* Feb. 5, 2020 ResCap Letter [Doc. No. 5399].) In order to ensure a clean record on this issue, the Court will briefly discuss the procedural background leading to this order.

Defendant Primary Residential Mortgage, Inc. ("PRMI") previously sought summary judgment on Count One of ResCap's Complaint. (*See* PRMI Mot. for Summ. J. [Doc. No. 5221]; PRMI Mem. in Supp. of Summ. J. [Doc. No. 5223] at 33–34.) As the Court noted in its subsequent order on summary judgment, ResCap argued that it would be premature to dismiss its breach of contract claim, but indicated its intent to update the Court as to whether it would consent to dismissal of the claim. *See In re ResCap Liquidating Tr. Litig.*, Nos. 13-cv-3451 (SRN/HB), 16-cv-4070 (SRN/HB) (Doc. No. 5361), 2019 WL 7038234, at *17 n.16, ___ F. Supp. 3d ___ (D. Minn. Dec. 20, 2019). Accordingly, the Court deferred ruling on

PRMI's motion, and ordered ResCap to provide the Court with an update by the date of the pretrial conference. *Id.*

On January 23, 2020, the Court held a final pretrial conference with the parties, at which time ResCap indicated that it would be willing to withdraw its breach of contract claim through a similar stipulation ResCap had used in an earlier case involving a different defendant, Home Loan Center. That stipulation permitted ResCap to withdraw its breach of contract claim without prejudice to reassertion "if there is a reversal on appeal or reconsideration of" the Court's summary judgment order in the Home Loan Center case. (*See* Order on Stip. of Withdrawal of Breach of Contract Claim [Doc. No. 4515].) At the pretrial hearing, however, PRMI did not stipulate to the same course of action, and instead asserted that ResCap had failed to respond to its summary judgment motion, and accordingly its breach of contract claim should be dismissed with prejudice. At the conclusion of the hearing, the Court ordered ResCap to respond to PRMI's arguments in writing, and later in its subsequent January 31, 2020 Omnibus Order on Motions in Limine, the Court gave ResCap five days to do so. *See In re RFC & ResCap Liquidating Tr. Litig.* (MIL Order) (Doc. No. 5390), Nos. 13-cv-3451 (SRN/HB), 16-cv-4070 (SRN/HB), 2020 WL 504661, at *26 (D. Minn. Jan. 31, 2020).

On February 5, 2020, ResCap filed a letter with the Court consenting to entry of summary judgment on Count One (Breach of Contract) of its Complaint. (*See* Feb. 5, 2020 ResCap Letter [Doc. No. 5399].) Accordingly, in light of ResCap's consent, **IT IS HEREBY ORDERED** that PRMI's Motion for Summary Judgment [Doc. No. 5221] as to Count One

(breach of contract) of ResCap's Complaint is **GRANTED**, and Count One is **DISMISSED**
WITH PREJUDICE.

IT IS SO ORDERED.

Dated: February 12, 2020

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge